

Assembly Bill No. 1004

Passed the Assembly May 23, 2013

Chief Clerk of the Assembly

Passed the Senate September 9, 2013

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2013, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 817 of the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

AB 1004, Gray. Criminal procedure.

Existing law requires that a declaration in support of the warrant of probable cause for arrest be a sworn statement made in writing. Existing law also authorizes the magistrate to take an oral statement under oath under specified conditions that provide for the use of facsimile transmission equipment or electronic mail if prescribed conditions are met, including, but not limited to, the inclusion of the declarant's digital signature.

This bill would specify that the declaration may be by telephone and computer server and that the signature may be an electronic signature, and would make conforming changes.

Existing law requires the magistrate to print related electronic documents and sign the warrant if the warrant is granted.

This bill would require, if the documents are received by electronic mail or computer server, that these documents be subsequently printed and would specify that the magistrate's signature may be in the form of a digital signature or an electronic signature.

The people of the State of California do enact as follows:

SECTION 1. Section 817 of the Penal Code is amended to read:

817. (a) (1) When a declaration of probable cause is made by a peace officer of this state, in accordance with subdivision (b) or (c), the magistrate, if, and only if, satisfied from the declaration that there exists probable cause that the offense described in the declaration has been committed and that the defendant described therein has committed the offense, shall issue a warrant of probable cause for the arrest of the defendant.

(2) The warrant of probable cause for arrest shall not begin a complaint process pursuant to Section 740 or 813. The warrant of

probable cause for arrest shall have the same authority for service as set forth in Section 840 and the same time limitations as that of an arrest warrant issued pursuant to Section 813.

(b) The declaration in support of the warrant of probable cause for arrest shall be a sworn statement made in writing.

(c) In lieu of the written declaration required in subdivision (b), the magistrate may take an oral statement under oath under one of the following conditions:

(1) The oath shall be taken under penalty of perjury and recorded and transcribed. The transcribed statement shall be deemed to be the declaration for the purposes of this section. The recording of the sworn oral statement and the transcribed statement shall be certified by the magistrate receiving it and shall be filed with the clerk of the court. In the alternative, the sworn oral statement may be recorded by a certified court reporter who shall certify the transcript of the statement, after which the magistrate receiving it shall certify the transcript, which shall be filed with the clerk of the court.

(2) The oath is made using telephone and facsimile transmission equipment, or made using telephone and electronic mail, or telephone and computer server, under all of the following conditions:

(A) The oath is made during a telephone conversation with the magistrate, after which the declarant shall sign his or her declaration in support of the warrant of probable cause for arrest. The declarant's signature shall be in the form of a digital signature or electronic signature if electronic mail or computer server is used for transmission to the magistrate. The proposed warrant and all supporting declarations and attachments shall then be transmitted to the magistrate utilizing facsimile transmission equipment, electronic mail, or computer server.

(B) The magistrate shall confirm with the declarant the receipt of the warrant and the supporting declarations and attachments. The magistrate shall verify that all the pages sent have been received, that all pages are legible, and that the declarant's signature, digital signature, or electronic signature is acknowledged as genuine.

(C) If the magistrate decides to issue the warrant, he or she shall:

(i) Cause the warrant, supporting declarations, and attachments to be subsequently printed if those documents are received by electronic mail or computer server.

(ii) Sign the warrant. The magistrate's signature may be in the form of a digital signature or electronic signature if electronic mail or computer server is used for transmission to the magistrate.

(iii) Note on the warrant the exact date and time of the issuance of the warrant.

(iv) Indicate on the warrant that the oath of the declarant was administered orally over the telephone.

The completed warrant, as signed by the magistrate, shall be deemed to be the original warrant.

(D) The magistrate shall transmit via facsimile transmission equipment, electronic mail, or computer server, the signed warrant to the declarant who shall telephonically acknowledge its receipt. The magistrate shall then telephonically authorize the declarant to write the words "duplicate original" on the copy of the completed warrant transmitted to the declarant and this document shall be deemed to be a duplicate original warrant.

(d) Before issuing a warrant, the magistrate may examine under oath the person seeking the warrant and any witness the person may produce, take the written declaration of the person or witness, and cause the person or witness to subscribe the declaration.

(e) A warrant of probable cause for arrest shall contain the information required pursuant to Sections 815 and 815a.

(f) A warrant of probable cause for arrest may be in substantially the following form:

County of _____, State of California.

The people of the State of California to any peace officer of the STATE:

Proof by declaration under penalty of perjury having been made this day to me by _____,
(name of affiant)

I find that there is probable cause to believe that the crime(s)

of _____
(designate the crime/s)

has (have) been committed by the defendant named and described below.

Therefore, you are commanded to arrest

_____ and to bring the defendant
(name of defendant)

before any magistrate in _____ County pursuant to Sections 821, 825, 826,
and 848 of the Penal Code.

Defendant is admitted to bail in the amount of _____ dollars (\$_____).

Time Issued: _____
(Signature of the Judge)

Dated: _____ Judge of the _____ Court

(g) An original warrant of probable cause for arrest or the duplicate original warrant of probable cause for arrest shall be sufficient for booking a defendant into custody.

(h) Once the defendant named in the warrant of probable cause for arrest has been taken into custody, the agency that obtained the warrant shall file a “certificate of service” with the clerk of the issuing court. The certificate of service shall contain all of the following:

- (1) The date and time of service.
- (2) The name of the defendant arrested.
- (3) The location of the arrest.
- (4) The location where the defendant was incarcerated.

Approved _____, 2013

Governor